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HUMAN RIGHTS COMMITTEE

Fiftieth session

SUMMARY RECORD OF THE 1314th MEETING

Held at Headquarters, New York,
on Wednesday, 6 April 1994, at 10 a.m.

Chairman: Mr. ANDO

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The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Draft general comment on article 27 of the Covenant (continued) (CCPR/C/50/CRP.1/Rev.1)

1. The CHAIRMAN said that a corrected version of the French text had been circulated.

2. Mrs. CHANET said that on the basis of the corrected French version of the text she could join the consensus on the draft general comment, as amended in the debate.

3. The draft general comment on article 27, as orally amended, was adopted.

ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-EIGHTH SESSION:

(a) ANNUAL REPORT SUBMITTED BY THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 45 OF THE COVENANT

(b) EFFECTIVE IMPLEMENTATION OF UNITED NATIONS INSTRUMENTS ON HUMAN RIGHTS AND EFFECTIVE FUNCTIONING OF BODIES ESTABLISHED PURSUANT TO SUCH INSTRUMENTS

(c) WORLD CONFERENCE ON HUMAN RIGHTS

4. Mr. AGUILAR (Rapporteur), said that the annual report of the Human Rights Committee concerning its activities during its forty-sixth, forty-seventh and forty-eighth sessions had been considered by the Third Committee during November and December 1994. The Committee had been commended for its initiatives designed to improve its working methods under article 40 of the Covenant. The concluding comments adopted at the end of the consideration of States parties' reports had been particularly welcomed. The European Union had inquired about the Committee's proposals regarding the follow-up States parties were giving to those comments. The useful general comments were once again welcomed, and the Committee had been called on to continue adjusting its working methods to respond to the increasing number of communications received under the Optional Protocol.

5. Regarding the effective implementation of human rights instruments and the effective functioning of the treaty bodies, many delegations had expressed support for obtaining universal acceptance for the major human rights instruments, and welcomed the Secretary-General's efforts to determine obstacles to ratification. A number of delegations had welcomed the innovative procedures developed by the various treaty bodies with regard to prevention, emergency situations, early warning and follow-up.

6. Many delegations had referred to the conclusions and recommendations contained in the interim study by the independent expert, Mr. Philip Alston (A/CONF.157/PC/62/Add.11/Rev.1). They believed that fundamental changes to the

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human rights treaty system should be considered to make it more effective, to relieve the reporting burden on States parties and to give the Centre for Human Rights adequate means to meet the escalating demands on its services. The high number of overdue reports was deplored and the strategy adopted by some treaty bodies of scheduling the situation of a non-reporting State for consideration was commended. Many delegations had endorsed the suggestion that reports under the various instruments could be consolidated into a single comprehensive report. Thematic, rather than article-by-article reports merited consideration. Delegations felt that the Committees could adopt some relatively simple reforms to improve their functioning, such as the adoption of uniform practices and standard terminology, to make the reporting process more transparent. More time should be allotted for States to prepare responses to lists of issues. The participation of non-governmental organizations and national institutions in the preparation and dissemination of reports should also be encouraged.

7. Mr. EL-SHAFEI said that he would appreciate some clarification of General Assembly resolution 48/119, paragraph 7: the reference to "national reports" was unclear. He would also welcome more precision on paragraph 16 of that resolution, as it was his understanding that international standards had already been laid down by the Covenants themselves, and the Committee's general comments expounded on those uniform standards.

8. Mrs. HIGGINS noted the reaction of States to the objective difficulties in reporting, but also a tendency on their part to avoid accountability as much as possible. It had been clear at the Vienna Conference that opportunities to make the treaty system more effective were not taken and no proposals to increase accountability by States parties had been adopted. The system should be streamlined wherever possible, but not for the purpose of making life easier for parties not in compliance with the Covenant. She was not in favour of scheduling the situation of a non-reporting State for consideration, or of thematic, rather than article-by-article, reporting. If those suggestions were followed, there was a danger that the Committee could lose some of the respect it had earned for its systematic and in-depth reporting requirements. Consideration could be given to allowing more time for the preparation of replies to lists of issues, although that would pose some difficulties for the Committee.

9. Non-governmental organizations should not have a role in the preparation of State party reports, since that might lead to an insidious merging of their interests with those of Governments. They should, however, have a significant role in their dissemination. The Committee should continue to bear in mind that it was the guardian of the Covenant, and as such, must ensure States parties' compliance with their obligations.

10. Mrs. EVATT said that some States parties seemed to be unaware of overlapping reporting obligations among the various treaties to which they were party. More coordination at the national level regarding reports to international treaty bodies would lighten their burden, but that was a different concept from thematic reporting.

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11. Concerning non-governmental organizations, she felt that States might produce better reports and focus on issues of interest to the Committee if some consultation took place with such organizations during the preparation process, though it remained the responsibility of Governments to prepare the reports. Since the General Assembly had made large number of proposals, it might be wise to ask one of the Committee's working groups to consider them and recommend any necessary action.

12. Mr. WENNERGREN said that the Committee should give some consideration to the proposal to institute a procedure regarding follow-up to the concluding comments to States parties. Currently, any follow-up took place when the next periodic report was submitted, but since such reports were sometimes delayed, certain recommendations should be addressed more quickly. The matter could be considered by the Working Group on article 40.

13. Mr. SADI said that involvement of non-governmental organizations in the preparation of reports of States parties could ensure their dissemination, and might force the State party to present a more realistic and less abstract and academic report. Conflicts between the Government and such organizations would only make the process more dynamic. Though he appreciated Mrs. Higgins' concern, the result she feared would not necessarily materialize.

14. Mr. POCAR welcomed the increased interest in the activities of treaty bodies among the General Assembly. He agreed with Mrs. Higgins, however, that its suggestions should be followed only in order to strengthen the system. The huge number of overdue reports - nearly 1,000 - should be a matter of concern to all United Nations bodies, but the solution was not to reduce the reporting obligations. Certainly, he supported any measure to strengthen the Centre for Human Rights, but disagreed that the idea of a global report would reduce the reporting burden. The concept of thematic reports might be appropriate for other treaty bodies, but would not be suitable for the Committee because of the clear-cut legal obligations of States parties contained in the Covenant. He noted the tendency to apply criteria that were appropriate for certain bodies but not for others. Follow-up to the recommendations to States parties under article 40 before the submission of the next report seemed a good idea.

15. The treaty monitoring bodies had a different type of dialogue with the States parties and with their non-governmental organizations, and it was not for the treaty bodies to tell States and non-governmental organizations how they should cooperate. Each had its own distinct competence, and the Committee should attempt to strengthen its dialogue with each group.

16. Lastly, the Committee should give more consideration to the suggestion contained in General Assembly resolution 48/119, paragraph 14, that members should provide advisory services and technical assistance.

17. Mr. DIMITRIJEVIC agreed with Mr. Pocar that, in spite of the similarities, the work of the treaty bodies was specific, and thematic reports might not be appropriate for all. Therefore, the Committee should be careful to maintain its high standards of reporting. The backlog could be attributed mainly to the

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generally unsatisfactory attitude of States parties towards their obligations. The Centre for Human Rights should be strengthened in order to provide more assistance to States. A network of institutions and universities able to assist in the preparation of reports could be established.

18. The dialogue with non-governmental organizations and their ability to provide facts and information to the Committee was valuable, but they should not be pushed to cooperate with Governments. Such organizations represented civil society, while the treaties established the relationship between the Committees and Governments. On the whole, he found the current system satisfactory.

19. Mr. LALLAH felt that Mrs. Higgins was not correct in believing herself to be in a minority in holding the views she had expressed on the participation of non-governmental organizations. The Committee had stated on a number of occasions that the reports submitted by States parties should be made public, precisely in order to enable the non-governmental organizations to make their own contributions to the Committee's deliberations.

20. As Mr. Dimitrijevic had rightly pointed out, there was now a tendency for Governments to set up their own non-governmental organizations, especially where the Committee had been highly critical of a State party. There had, indeed, been cases where a State party had lost no time in setting up a national commission on human rights to serve its own ends.

21. What was important from the point of view of the Committee was the State's responsibility; it would thus not be desirable for the Committee to approve a mechanism that enabled States to evade their responsibilities. The non-governmental organizations should be made aware of reports so as to be able to send information to the Committee. The participation of Japanese non-governmental organizations had been particularly beneficial in that regard, and had contributed very positively to the consideration by the Committee of the human rights situation in Japan.

22. On the question of simplifying procedures, there appeared to be a misconception on the part of States parties. It was the latter that had created the treaty bodies and, although there was some overlap between the terms of reference of one body and another, he was entirely opposed to the suggestion that a single comprehensive report should be prepared. Much of the information in such a report would be irrelevant to some of the treaty bodies and, as far as the Committee on Human Rights was concerned, the International Covenant on Civil and Political Rights covered a number of rights that other instruments did not deal with. A thematic approach, as suggested in the resolution of the General Assembly, was therefore not practicable.

23. On the question of follow-up, the Committee dealt with two categories of reports: the usual periodic reports and the ad hoc reports on emergency situations. The follow-up procedure might take up three or four meetings in a session, and it would be unrealistic to consider such a procedure under present circumstances in which the Committee held only three sessions a year. While such a suggestion might be considered if and when the Committee became a

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permanent body meeting all the year around, the Committee must work within its current means.

24. Mr. MAVROMMATIS said that the questions of follow-up and the simplification of procedures raised in the resolution were matters that required a great deal of study before any recommendation could be made.

25. On a related matter, he said that it was becoming increasingly necessary for the treaty bodies to improve their communication with the General Assembly so as to follow its discussions and to make their own input when required. That was a matter that might be taken up by the chairpersons of the treaty bodies at their periodic meetings.

26. On the question of the non-governmental organizations, he fully agreed with what had been said by Mrs. Higgins. By and large, the non-governmental organizations were doing an excellent job under the existing arrangements.

27. With respect to follow-up, the Committee already had a procedure. Although it might be improved in some respects, the time available to the Committee was too short for it to be able to contemplate any radical changes in the current arrangements.

28. Mr. HERNDL said that, as Mr. Lallah had pointed out, it was the States parties themselves that had chosen the system for reporting to the various treaty bodies, and they should not be allowed to evade their treaty obligations merely because they now found the system inconvenient. Although, at some time in the future, the various treaties on human rights might conceivably be combined into one, as suggested by the independent expert (A/CONF.157/PC/62/Add.11/Rev.1), the present situation was that there existed a variety of international instruments calling for separate reports and it was neither practical nor desirable to try to combine them.

29. Regarding the appeal that had been made to the treaty bodies to simplify their procedures the Committee on Human Rights was aware of the problem and had the issue of its working methods constantly in mind. He felt that current procedures were reasonably adequate to the situation.

30. On the question of follow-up, the General Assembly had a potential role to play and it was up to the Committee, where the situation so required, to persuade the General Assembly of the necessity for it to take action in particularly serious cases.

31. Mr. BRUNI CELLI agreed with many of the ideas that had been expressed and felt that the Committee, when it received reports submitted under article 40 of the Covenant, might press States parties which had introduced a state of emergency and had taken measures derogating from their obligations under the Covenant to provide more precise information under article 4 concerning the justification for such a step. It should be recalled that it was during states of emergency that violations of human rights most often occurred.

(Mr. Bruni Celli)

32. Another point on which the Committee ought perhaps to be more rigorous concerned reservations entered by States parties. Many of those reservations had the effect of limiting the access of citizens to the rights enshrined in the Covenant.

33. On the question of giving more publicity to the work of the Committee, a matter referred to in paragraph 26 of General Assembly resolution 48/119, he felt that it might be appropriate for the Committee to ensure that greater publicity was given to the failure of States to submit reports or to comply with other aspects of their obligations, rather than confining the reporting of such facts only to United Nations documents.

34. Mr. PRADO VALLEJO said that the establishment of the Office of the United Nations High Commissioner for Human Rights created a new situation for the Committee, since the General Assembly had given the High Commissioner a number of powers and responsibilities which the Committee could not ignore. At some point it should consider how it might coordinate its work with that of the new High Commissioner.

35. There were two major issues for the Committee in that regard. One was the delay on the part of some States parties in the submission of their reports. When the High Commissioner travelled to various States that had not fully complied with their obligations under the Covenant, it might be very useful if he were to remind such States of the action that was expected of them. The other issue upon which there might be coordination with the High Commissioner was that of follow-up. In that regard, the High Commissioner might play a useful role, supplementing the efforts already made from time to time by members of the Committee. The matter was one which needed to be discussed.

36. Mr. SADI regretted that the document before the Committee summarizing the action taken by the General Assembly at its forty-eighth session described the duty of States parties to submit its reports under the human rights treaty system as being a "burden". With regard to follow-up under article 40 of the Covenant, he said that he would support the idea of appointing a special rapporteur to be responsible for that matter. That would enable the Committee to be informed, for example within the span of one year, of what action was being taken by States parties, instead of waiting, sometimes for several years, for the next periodic report.

37. Mr. AGUILAR, speaking as a member of the Committee rather than as the Rapporteur, said that he largely supported what had been said by other members of the Committee in response to the suggestions made by the General Assembly. The system of State reporting had been established by the States themselves and could not be regarded as a "burden". In any case, the submission of a report every 10 months to some six or seven treaty bodies could not be described as an onerous obligation.

38. The third report from Costa Rica was a perfect illustration of the importance of insisting on an article-by-article report and of not accepting thematic reports. A question put sometime before by the Committee on one of the articles of the Covenant had not been answered by that country on the grounds

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that the information had already been reported to another treaty body. Such a response was entirely unacceptable. Moreover, it should be borne in mind that the proper preparation of reports was a process that was of benefit to the States themselves.

39. On the question of the involvement of non-governmental organizations, it was obviously desirable that they should be involved in the dissemination of the reports, but he had the same misgivings as those voiced, in particular, by Mrs. Higgins and Mr. Dimitrijevic concerning the suggestion that such organizations might become involved in the preparation of reports. If that were done there was always a risk that they might be subjected to pressure from the Government to submit information acceptable to itself. The cases of Ireland and Japan, which had come before the Committee in the previous year, illustrated the very effective role that non-governmental organizations could play if they preserved their independence from Governments.

40. Another point, raised by Mr. Bruni Celli, concerned the question of reservations. General comments were currently being prepared on reservations, and perhaps the time had come to prepare comments also on article 4 of the Covenant stating more clearly what information the Committee needed to have in that connection.

41. As to the idea of the follow-up to the final comments, he shared the view of Mr. Sadi that there was no particular problem. It would be a simple matter to write a letter once a year or so to States parties inquiring what was being done.

42. On the question of the preparation of the list of issues, he had long been in favour of preparing the list as early as possible so that States parties could receive it at the latest at the time of the session preceding the one at which their response was expected. That would enable them to prepare their answers to the questions of the Committee and would make it difficult for them to evade their responsibilities on the pretext that too little time had been allowed.

43. Finally, he pointed out that, in its next annual report, the Committee should inform the General Assembly of its views on the action taken by the Assembly.

44. The CHAIRMAN said that the annual report would contain a section dealing with that matter.

45. Mr. LALLAH said that the Working Group on article 40 might study the question of the desirability of amending the Committee's guidelines for the compilation of reports by including a distinct section on follow-up.

46. Mr. PRADO VALLEJO said that the Working Group on article 40 might also study the implications of paragraphs 14 and 15 of General Assembly resolution 48/119, particularly paragraph 15, which called on the Human Rights Committee to consider further innovations in its working methods, in particular aiming at the prevention of serious human rights violations in its field of competence.

47. Mrs. EVATT supported that suggestion.

48. The CHAIRMAN said that the suggestion would be taken up by the Working Group.

49. The CHAIRMAN invited the Committee to consider the recommendation by the Working Group on the draft third optional protocol to the Covenant.

50. Mr. WENNERGREN, introducing the recommendation by the Working Group, noted that the text of the draft third optional protocol had been transmitted to the Committee for its comments. In general, the Working Group had been somewhat critical of the proposal, questioning its desirability and raising the issue of whether articles 9.3, 9.4 and 14 should be added to the non-derogable provisions under article 4.2. Given that it was not realistic to expect all the provisions of article 14 to remain in effect during an emergency situation, the Working Group had concluded it should not be added to the non-derogable provisions.

51. The Working Group was firmly of the view that the remedies provided for under articles 9.3 and 9.4, read in conjunction with article 2, were inherent to the Covenant as a whole, since habeas corpus and amparo were cornerstones of the Covenant and must not be derogated from. As indicated in paragraph 2 of the recommendation, adopting the suggested draft third optional protocol might in fact weaken the Covenant.

52. Mrs. EVATT said that the idea of strengthening articles 9.3 and 9.4 had some appeal, since they were often not complied with during states of emergency, but she doubted whether adding them to the list of non-derogable provisions under article 4.2 was the best means of proceeding, particularly since they went together with article 9.1. Equally, it did not seem feasible to separate out the various elements of article 14.

53. Mr. POCAR said that the Committee should not support the suggested third optional protocol. Its status should be made clear by changing the first part of paragraph 2 to read "... the purpose of the draft proposed optional protocol ...". He further agreed that the remedies provided under articles 9.3 and 9.4, in conjunction with article 2, were inherent to the Covenant. Perhaps the point could be made more clearly by referring to the provision in article 4.1 that derogations were possible only to the extent strictly required by the exigencies of the situation.

54. Mr. EL-SHAFEI said that the Committee would have been better placed to assess the proposal had more background been given. It was not known, for example, whether the original idea had come from the Subcommission or from Member States. It was well known in the Committee that States often failed to comply with articles 9 and 14 during states of emergency, and a way must be found to rectify that situation, but it did not seem that a third protocol offered the best solution. It might be better to amend article 4, although there might be opposition to that. In any event, the Committee should take the initiative in increasing awareness of failure by States parties to comply fully with those articles of the Covenant.

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55. Mr. LALLAH said that he accepted the Working Group's view. He agreed with the statement in paragraph 3 that it would not be meaningful to add to article 4.2 only some provisions of article 14. The text could be amended to reflect the fact that while elements of article 8 had been signalled for the purposes of article 4.2, the same could not be done for article 14, which must be taken as a whole.

56. Mr. HERNDL said that the Working Group's paper was convincing. The way in which the question had originated was an indication of the confusing manner in which human rights issues were dealt with. The Committee had already provided its views on articles 4, 9 and 14 in its general comments although the general comment on article 4 should probably be revised. The Committee should consider the need for and feasibility of a new protocol carefully, since it did not appear to be the best means of proceeding. He trusted that the Committee's views would be reflected in the final study that would be done on the matter, in which connection it should be made quite clear that the Human Rights Committee was the competent body. Regarding the text of the recommendation, the first sentence of paragraph 1 should be amended to refer to the suggested text of a draft third optional protocol, and reference should be made to Subcommission resolution 1993/26 and the attendant draft decision, rather than to document E/CN.9/1993/24.

57. Mr. MAVROMMATIS said that he agreed with the thrust of the Working Group's recommendations, but would prefer the last sentence of paragraph 3 to be deleted.

58. Mrs. HIGGINS supported the deletion of the final sentence of paragraph 3. Regarding the suggestions relating to article 4, the Committee should keep to the inherent arguments and not become involved in amending the text of article 4.

59. Mr. EL-SHAFEI said that in view of the violations of article 14, the Committee might consider a recommendation to States parties.

60. Mr. POCAR said that he was prepared to delete the references to article 4 of the Covenant and agreed with Mr. Bruni Celli that the Committee should revise its comments on that article.

61. Mrs. CHANET said she agreed with Mrs. Higgins that the fewer references made to article 4 the better; it should be borne in mind that the paper had been prepared as a reply to a specific question asked by the Subcommission. She had no objection to the deletion of the last sentence of paragraph 3.

62. Mr. FRANCIS said that he agreed with Mr. Herndl's remarks on presenting the Human Rights Commission with a fait accompli in the form of a draft optional protocol, and suggested that the Committee might take that matter up in another context.

63. Mr. HERNDL proposed that the word "suggested" should be inserted before the word "text" in the second line of paragraph 1.

64. Mrs. EVATT said that if there was a realistic prospect that the proposal for a third optional protocol would go forward it might be useful to point out to the Subcommission that articles 9.3 and 9.4 could not be read without reference to article 9.1.

65. Mr. TISTOUNET (Secretary of the Committee) pointed out that at its last session the Commission on Human Rights had referred to considering the "desirability" of the proposed third optional protocol.

66. Mr. WENNERGREN said he thought a consensus had been reached that the word "proposed" should be inserted before the words "draft third" in the third line of paragraph 1 and that the last sentence of paragraph 3 should be dropped. He agreed with Mrs. Evatt's comment that articles 9.3 and 9.4 could not be read without reference to article 9.1, but felt that it would be wise not to add comments on that point to the text.

67. The CHAIRMAN said that the point raised by Mrs. Evatt could be taken up when the Committee reviewed its comment on article 9.

68. Mrs. CHANET suggested that the word "possible" rather than the word "proposed" should be inserted before the words "draft third" in line 3 of paragraph 1.

69. The text, as amended, was adopted.

70. Mr. WENNERGREN, introducing the draft recommendation by the Working Group on the annual report of the Committee to the General Assembly, emphasized that no change was being proposed with regard to the Committee's summary records themselves; the recommendation was only that the summaries of the examination of State party reports based on those summary records should no longer be included in the annual report. It was felt that if only the concluding comments of the Committee on State party reports were included, the annual report would be shorter and less cumbersome and more space could be given to other matters such as that of follow-up. It would then be possible also to make the concluding comments more comprehensive and systematic. The summary records themselves should continue to be produced and efforts should be made to make them more easily available to interested parties.

71. Mrs. HIGGINS agreed that the summaries could be dispensed with. The summary records should continue to be made available, but the Committee should move in the direction of giving greater prominence to its joint concluding comments. She hoped also that it would become possible before too long to include a section on compliance in the Committee's annual reports.

72. It was also important for the Committee's concluding comments to be publicized more effectively, and she suggested that a working group might be established to deal with that matter.

73. Mr. LALLAH said it was important to preserve the Committee's institutional memory by continuing the publication of the Yearbook on Human Rights.

74. Mr. TISTOUNET (Secretary of the Committee) said that, as a result of the donation of the funds required by a private foundation, work had been begun in 1993 on updating the Yearbook and it was hoped that the updating would be completed by the end of 1994.

75. Mr. EL-SHAFEI said it would help publicize the work of the Committee if the summary records and summaries were included in the Yearbook.

76. Mr. POCAR said that in general he agreed with the Working Group's suggestion that only the Committee's concluding comments should be included in the annual report. The summaries of comments by individual members should also be dropped or, failing that, given in an annex. He agreed that summary records should be made available as soon as possible and that ways and means should be considered to make them more widely available.

The meeting rose at 1.05 p.m.